



U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of the Chief Counsel

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Washington, D.C. 20591

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Antitrust Division, Room 3109
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Mr. Barnett:

We anticipate that the Secretary of Transportation will soon determine, pursuant to 49 U.S.C. § 41722,¹ that it is necessary to convene a meeting of air carriers with the Administrator of the Federal Aviation Administration (FAA) to discuss flight reductions at New York's John F. Kennedy International Airport (JFK) in an effort to reduce overscheduling and flight delays during peak hours of operation. Because of severe congestion at that airport and the resulting delays and inconvenience to the traveling public, the Administrator intends to convene such a meeting in the immediate future. The purpose of this letter is to describe the format and procedures for the meeting and to ensure that, provided the meeting is conducted in accordance with this letter, the Department of Justice

¹ § 41722 Delay reduction actions.

- (a) Scheduling Reduction Meetings--The Secretary of Transportation may request that air carriers meet with the Administrator of the Federal Aviation Administration to discuss flight reductions at severely congested airports to reduce overscheduling and flight delays during hours of peak operation if--
- (1) the Administrator determines that it is necessary to convene such a meeting; and
 - (2) the Secretary determines that the meeting is necessary to meet a serious transportation need or an important public benefit.
- (b) Meeting Conditions--Any meeting under subsection (a)--
- (1) shall be chaired by the Administrator;
 - (2) shall be open to all scheduled air carriers; and
 - (3) shall be limited to discussions involving the airports and time periods described in the Administrator's determination.
- (c) Flight Reduction Targets--Before any such meeting is held, the Administrator shall establish flight reduction targets for the meeting and notify the attending air carriers of those targets not less than 48 hours before the meeting.
- (d) Delay Reduction Offers--An air carrier attending the meeting shall make any offer to meet a flight reduction target to the Administrator rather than to another carrier.
- (e) Transcript--The Administrator shall ensure that a transcript of the meeting is kept and made available to the public not later than 3 business days after the conclusion of the meeting.

would not seek to challenge as a violation of the U.S. antitrust laws any air carrier's attendance at or participation in the meeting or an air carrier's unilateral actions taken to comply with an Order of the Administrator issued as a result of the meeting.

Meeting Procedures:

1. Notice to Air Carriers and Other Interested Parties

To assist the Administrator in formulating flight reduction targets, as contemplated by 49 U.S.C. § 41722, and to identify the air carriers that will attend the meeting, the Administrator will send a letter notifying the JFK airport operator and each scheduled air carrier serving JFK of the meeting. The letter will describe the necessity for the meeting and will identify the periods during a representative business day that the Administrator considers severely congested. The letter also will establish either the date and time for the meeting or a period during which the meeting is expected to take place. It will designate a location in the Washington, D.C., area as the meeting's location. The letter will advise that the meeting and all preparations for it are subject to the antitrust laws and that communications among air carriers regarding competitively sensitive information, such as markets served, prices charged, and marketing plans, could result in a violation of the antitrust laws. Copies of the letter will be sent to the Antitrust Division, as well as to the Air Transport Association, Regional Airline Association, and Air Carrier Association of America.

The FAA Air Traffic Organization (ATO) will separately provide the JFK airport operator and each air carrier serving JFK with a summary showing the FAA's current information as to scheduled arrivals and departures at JFK (including code-share flights) for each air carrier during each 15 minute period from 6 a.m. to 11 p.m. on a representative business day. The FAA's focus on these hours is for overall planning purposes only, and it does not necessarily reflect the peak hours of operation at JFK. A letter enclosed with this summary will request that each air carrier confirm the FAA's current information as to that air carrier's scheduled operations at JFK, respond as to whether the air carrier will attend the scheduling reduction meeting, and, if the air carrier will attend, identify its representative.

The FAA also will publish in the Federal Register a notice of the meeting that identifies the basis for the meeting, when and where the meeting will take place, and the manner in which the meeting will be conducted. The Federal Register notice will invite all scheduled air carriers to attend and will specify that a transcript of the meeting will be available for inspection in a public docket opened within three business days after the Administrator formally adjourns the scheduling reduction meeting.

2. Establishment and Notice of Flight Reduction Targets

The Administrator shall establish flight reduction targets, based on the number of flight operations scheduled for a representative business day. As required by the statute, at least 48 hours prior to the meeting, the Administrator will publish notice of these targets on the FAA's website. The notice will specify the total number of reductions sought from the total

number of flight operations conducted. The notice will not include carrier-specific limitations, targets, or suggested reductions.

3. *Conduct of the Meeting*

The meeting will be conducted under the following procedures:

- a. The meeting will be chaired by the Administrator or by a delegate of the Administrator.
- b. The meeting will be open to attendance by the JFK airport operator and all scheduled air carriers, and the FAA will transcribe the meeting.
- c. Representatives of the Department of Justice will be invited to attend.
- d. At the beginning of the meeting, the FAA will announce that, pursuant to advice from the Department of Justice, no communication will be permitted by any air carrier representative in the presence of any representative of another air carrier regarding the subject of flight reductions at JFK or regarding any other competitively sensitive information, including but not limited to markets served, prices charged, and marketing plans.
- e. The Administrator will then distribute to the meeting's attendees a list of the number of flights, not specific as to air carrier, during each 15-minute period from 6 a.m. until 11 p.m. on a representative business day, and he will identify any periods that he considers severely congested, as well as general targets for flight reductions during those periods. This list will not include carrier-specific limitations, targets, or suggested reductions.
- f. Each air carrier serving JFK and attending the meeting will then be invited into a separate and confidential session with representatives of the ATO, at which the air carrier will be asked to offer flight reductions or schedule modifications. Only representatives of that air carrier and the U.S. government will be permitted to attend the offer sessions; however, the sessions will be transcribed.
- g. Any offer of flights reductions should specify the precise number of arrivals and departures, if any, the submitting air carrier is willing to remove from each of the severely congested periods identified by the Administrator, indicating whether the flight operation(s) would be cancelled or moved to another time period. The offer may not be explicitly contingent on specific flight reductions by other air carriers but may be conditioned on the Administrator's implementation of an overall reduction of specified numbers of flight operations toward the target during the periods in question. The offer may not contain information from the air carrier on markets served, prices charged, marketing plans or other competitively sensitive matters.
- h. After the completion of all such sessions, the ATO will: (1) review the offers made; (2) revise, in light of the offers made, the list of the number of flights, not specific as to air carrier, during each 15-minute period from 6 a.m. until 11 p.m. on a representative business day; and (3) consult with the Administrator. The Administrator will distribute to the meeting's attendees the carrier non-specific list of the number of flights on a representative business day, and he will identify any periods that he continues to consider severely congested and identify targets for flight reductions during those periods.

- i. At his discretion, the Administrator or his delegate may repeat steps (f) through (h), and he may continue the schedule reduction meeting as he deems necessary.
- j. If the Administrator determines that identifying carrier-specific targets would facilitate voluntary flight reductions and schedule modifications, the Administrator may advise each air carrier separately and confidentially of flight reduction targets specific to that air carrier. No carrier-specific information will be provided to any air carrier other than information regarding that air carrier; however, the Administrator may make general assurances with respect to the overall proportionality of the flight reductions among the air carriers serving JFK.
- k. Following the Administrator's identification of further flight reduction targets, each air carrier attending the meeting that serves JFK will be invited to a separate and confidential session with representatives of the ATO, at which the air carrier will be given the opportunity to submit a new or revised offer of flight reductions or schedule modifications.
- l. At his discretion, the Administrator or his delegate may repeat steps (j) and (k), and he may continue the schedule reduction meeting as he deems necessary.
- m. The Administrator may terminate the schedule reduction meeting at his discretion.

4. *Order of the Administrator Concerning Delays at JFK*

The ATO will review the final offers of each air carrier attendee of the meeting and recommend a proposed flight reduction plan to the Administrator. After the Administrator's review and approval of the plan, the resulting schedule reductions, including carrier-specific limitations, will be published in the Federal Register as a final order of the Administrator. The final order of the Administrator will specify a method by which air carriers adversely affected by the order may be relieved of its effect. The order will also be subject to modification by the Administrator.

Please advise if these procedures are acceptable to you.

Sincerely,



Kerry B. Long
Chief Counsel